2026:DHC:8085

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 02.09.2026
Date of Decision: 21.09.2026
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\# **CNR No. DLHC010309782021**

\+ CM(M) 673/2021 & CM APPL. 34697/2021

LOKEST DHAWAN .....Petitioner

Through: Mr. Ashutosh Kumar, Ms. Gunity Singh, Ms. Jitasha Bahl, Mr. Ayush Sharma and Mr. Vikram Shantu, Advs.

versus

ARUN DHAWAN & ORS. .....Respondents

Through: Mr. Vikas Tiwari and Mr. Faisal M. Khan, Advs. with Mr. Ojasvi Arora, Adv. for R-1 & 4

CORAM:
HON'BLE MR. JUSTICE AJAY DIGPAUL

<u>J U D G M E N T</u>

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1. Through the present petition, the petitioner seeks to challenge the order dated 26.08.2020 passed by the learned trial court in *"Lokesh Dhawan v Arun Dhawan"* bearing CS No. 10994/2016 whereby the learned trial court has dismissed the petitioner/plaintiff's application for amendment of plaint under Order VI Rule 17 of the Code of Civil Procedure, 1908.

2. The brief facts of the underlying case are as follows –

3. The present case emanates from an *inter-se* family dispute between the parties. The petitioner, respondent no. 1 and respondent no. 4 are three sons of the Late. Sh. Krishan Chander Dhawan. Respondent no. 2 is the daughter of Late. Sh. K.C. Dhawan who has transferred her interest in the case to respondent no. 1, and respondent no. 3, who was represented through his legal heirs, was also the son of Late. Sh. K.C. Dhawan. Respondent no. 2 and 3 were proceeded *ex-parte vide* this Court's order dated 01.06.2022. Hence respondent no. 1 and 4 are the only contesting respondents.

4. Late. Sh. K.C. Dhawan is stated to be the director and owner of Dhawan Electricals Pvt. Ltd and of a sister concern called AK Electricals. Dhawan Electricals is stated to have comprised of 1000 shares, out of which Late. Sh. K.C. Dhawan owned 85% of the shares *viz.* 850 shares, and the petitioner is stated to have owned 10 shares with the rest of the shares being divided between the rest of the family members. The petitioner was also a director of Dhawan Electricals and is stated to have drawn a salary of Rs. 50,000/- per month in that capacity till 2011.

5. Late. Sh. K.C. Dhawan demised intestate on 17.06.2010. It is stated by the respondents that before passing away, Late. Sh. K.C. Dhawan, in the presence of all the other legal heirs, transferred all his shareholding to respondent no.1.

6. The petitioner instituted the underlying partition suit on 21.04.2012 seeking a decree of partition in respect of the immovable properties listed in the schedule therein, and consequential reliefs of possession and injunction against the partitioned properties.

7. The petitioner had filed a petition under sections 397, 398, 402 and 403 of the Companies Act, 1956 before the learned Company Law Board seeking among other reliefs, a direction that all amendments to the shareholding shall be considered to be illegal and void. The petitioner has contended *inter-alia* that before the demise of Late. Sh. K.C. Dhawan, respondent no. 1, pursuant to a forged board meeting dated 17.06.2010 fraudulently transferred 85% of the company's shareholding.

8. The learned trial court in the suit for partition *vide* order dated 04.05.2012 directed the respondents to maintain *status-quo qua* the properties mentioned in Schedule I, and framed 4 issues *vide* order dated 27.08.2013. The court further directed the petitioner/plaintiff to file the evidence by way of affidavit within 12 weeks.

9. Thereafter, on 20.03.2014, the petitioner filed an application under Order VI Rule 17 seeking to amend paras 5-A to 5(BBB) of their plaint. The petitioner broadly contended *inter-alia-*

a. Upon the demise of their father, the surviving legal heirs mutually decided to divide all properties – movable and immovable in 6 equal halves. However, contrary to the assurances, the petitioner was ousted from the company in February 2011, and after being confronted with the same, the respondent disclosed that while on his deathbed, Late. Sh. K.C. Dhawan transferred all his shareholding to respondent no. 1.

b. To that effect, the respondent no. 1 gave the petitioner a Minutes of Meeting dated 16.08.2010 which stated that the transferred shares have been accordingly distributed between the surviving legal heirs.

c. Pursuant to the stated transfer, the records in the Registrar of Companies have been amended and the new shareholding is reflected therein.

d. Accordingly, the prayer clause of the petition was also amended to include prayer clause (g) *viz.* decree of partition for the movable properties of Late. Sh. K.C. Dhawan including bank accounts, shares of the company Dhawan Electricals Pvt.

Ltd, Fixed Deposits, Jewellery, Cash, etc.

10. The learned trial court *vide* order dated 26.08.2020 dismissed the petitioner's application under Order VI Rule 17. The learned trial court dismissed the petitioner's application noting as follows- the petitioner being a director of Dhawan Electricals would have known about the transfer of shareholding, the petitioner's petition challenging the transfer of shares before the learned NCLT is pending adjudication, and the prayer for inclusion of partition of shares would change the nature of the suit.

11. The learned counsel of the petitioner has submitted that the learned trial court has erred in holding that the petitioner knew about the transfer of shares, and thus, has not fulfilled the test of due diligence. The petitioner has submitted that on 17.06.2010, when the shares were purportedly transferred by Late. Sh. K.C. Dhawan to respondent no. 1, the petitioner was not available in the hospital, and hence at the outset, he did not have the knowledge of the transfer of shares. Thus, at that stage, the petitioner was not aware of any transfer of shares and was not aware that the records of the shareholding have been changed in the ROC.

12. He has submitted that even on 17.06.2011 *viz.* the death anniversary of Late. Sh. K.C. Dhawan, the respondent no. 1 gave the petitioner a minutes of meeting dated 16.08.2010 showing that the shareholding has been divided in $1/6^{th}$ share, and appropriately been transferred to the petitioner. Thus, even on 17.06.2011, the petitioner did not have any reason to distrust the minutes of meeting which stated that the shareholding will be divided equally in $1/6^{th}$ shares, or have any reason to believe that contrary to the minutes of the meeting dated 16.08.2010, the shareholding has been transferred in its entirety to respondent no. 1.

13. He has also submitted, that even assuming that the petitioner could have had some inkling of knowledge regarding misappropriation of shares, the petitioner, in his plaint in paragraph no. 5 has stated that he was unaware of any dealings in shares, and reserves his rights to raise the same at a later stage.

14. He has submitted that contrary to settled principles of law as enshrined in ***Rajesh Sharma v Krishan Pal & Anr.***[1], the learned trial court, while dismissing the application has considered the merits of the proposed amendment. He has submitted that the scope of the court at the stage of Order VI Rule 17 CPC is constrained only to assessing whether the amendments sought to be introduced were within the plaintiff's knowledge, or could have been within knowledge with appropriate due diligence.

15. He has submitted that the learned trial court has conducted a detailed assessment of the nature of reliefs sought in the CLB petition and has compared the same with the proposed amendments, and that the same is exceeding the scope at the stage of Order VI Rule 17, thereby making it impermissible in law. He has submitted that the aim of allowing amendments under Order VI Rule 17 CPC is to bring out the core underlying dispute of the case so as to ensure effective adjudication.

16. Stemming from the same premise, he submits that the learned Trial Court has adopted an unduly narrow approach while considering the application under Order VI Rule 17 CPC. The proposed amendment was only intended to place the complete factual position

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[1]**CS(OS) No. 800/2006**

on record and assist the Court in effectively adjudicating the dispute. The rejection of the application has, therefore, according to him, resulted in relevant facts being excluded from consideration, thereby impeding a complete and effective adjudication of the controversy. To this effect, he has placed reliance on the judgment of the Hon'ble Supreme Court in ***BK Narayana Pillai v Parmeswaran Pillai & Ors.***[2]

17. Lastly, he has placed reliance on the judgment of ***Baldev Singh & Ors. v Manohar Singh & Anr.***[3] and has submitted that the learned trial court has wrongly held that the amendment is hit by the proviso of Order VI Rule 17 CPC. He has submitted that the trial shall commence when the evidence has led, and since the same is yet to happen in the present case, the amendment should be allowed.

18. Per contra, the learned counsel for the respondent has relied upon the jurisdictional bar under section 430 of the Companies Act, and has submitted that notwithstanding the amendment, the learned trial court is barred from adjudicating the issue of transfer of shares since the same is sub-judice before the learned NCLT. To this effect, he has placed reliance on a judgment of a coordinate bench of this Court in **M/S Karyan Global LLP v. Vivek Kumar Mishra & Ors.**[4]

19. He has submitted that the petitioner is forum shopping and that the issue of legitimacy of transfer of shares is already pending adjudication before the learned NCLT. Till the time the learned NCLT does not hold that the shares were illegally transferred, till then the same cannot be partitioned and an amendment thereto cannot be

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[2] **(2000) 1 SCC 712**

[3] **(2006) 6 SCC 498**

[4] **CRP 10/2025**

sought. He has also reiterated that the learned NCLT is a specialized tribunal created for adjudicating exactly such issues, and that in such circumstances, multiplicity of proceedings should not happen.

20. He has submitted that the shares having been transferred before the demise of Late. Sh. K.C. Dhawan did not form a part of his estate, and thus, cannot be divided equally in a partition suit. Thus, since the partition suit was for the properties forming Late. Sh. K.C. Dhawan's estate, the learned trial court has rightly dismissed the amendment which sought to include the already transferred shares in the estate.

21. He has also submitted that the suit has been filed in May 2012 and the CLB petition challenging the transfer of shares and alleging oppression and mismanagement was filed sometime in August 2012, whereas, the amendment application was filed in 2014 stating that the petitioner did not have prior knowledge of the transfer of shareholding. He has submitted that the contention is logically inconsistent and infeasible.

22. He has submitted that the petitioner being a shareholder and a director has entirely failed the test of due diligence as required under Order VI Rule 17. He has submitted that it is not possible that a director of a company would not have knowledge for approximately two years of the transfer of the majority shareholding of the company. Furthermore, since the petitioner was a salary-drawing director whose salary stopped in 2011, it is obvious that he would have known about the transfer of shareholding. That being the case, the amendment application having been filed approximately 3 years after the petitioner's salary was stopped runs contrary to the test of due diligence, and the amendment application is simply a way to fill the lacuna in the petitioner's case.

23. Lastly, relying on the judgment of the Hon'ble Supreme Court in ***Kailash v Nankhu***[5] he has submitted that the learned trial court has rightly held that the amendment application which was filed after the framing of issues, is obviously after the commencement of trial.

24. In rebuttal to the reliance of the learned counsel for the respondent on ***M/s Karyan Global***, the learned counsel for the petitioner has relied on ***Aruna Oswal v Pankaj Oswal & Ors.***[6] to state the learned NCLT does not have the powers to decide questions of inheritance and title, and thus the matter should be heard by the learned trial court. He has further relied on ***Ammonia Supplies Corporation Private Limited v Modern Plastic Containers Pvt. Ltd.***[7] to submit that in cases of seriously disputed questions of title or where forgery is alleged, the same falls outside the summary rectification jurisdiction of the learned NCLT.

25. Heard. Perused the records.

26. Upon a conspectus of the arguments, the petitioner has raised the following points for consideration – (a) learned trial court has erred in presuming petitioner's knowledge *qua* transfer of shares; (b) learned trial court has erred in comparing the reliefs sought in the CLB petition; and (c) learned trial court has erred in considering the merits of the proposed amendments and taking an overly restrictive approach at the Order VI Rule 17 stage.

27. Before proceeding with the merits of the issue, it is pertinent to

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[5] **(2005) 4 SCC 480**
[6] **(2020) 8 SCC 79**
[7] **(1998) 7 SCC 105**

first analyse the contention of the jurisdictional bar to the learned trial court in view of the pending petition before the learned NCLT.

28. In the present case, the petitioner has filed a CLB petition under sections 397, 398, 402 and 403 of the Companies Act, 1956 seeking, among other reliefs, a direction that all amendments to the shareholding shall be considered to be illegal and void. Admittedly, the shares have been transferred, and the corresponding changes have been made in the records of the ROC. Thus, till the time the legality of the transfer of shares is not decided in favour of the petitioner, and proceedings before the learned NCLT thereto do not attain a quietus, the learned trial court could not have included the disputed shares within the partition suit.

29. Otherwise also, the issue as regards to the illegal transfer of shares in favour of the respondent/defendant can be evaluated by the learned NCLT, which has the competence to decide the same.

30. At this juncture, it is relevant to deal with the petitioner's contentions that the issue regarding transfer of shares requires a careful consideration of evidences, which falls beyond the summary jurisdiction of the learned NCLT, thus requiring the jurisdiction of the civil courts.

31. The Hon'ble Supreme Court in numerous of judgments *viz.* ***Radharamanan v Chandrashekhar Raja***[8], ***Kamal Kumar Gupta v Ruby General Hospital Ltd.***[9] has held that the learned CLB (now learned NCLT) exercises wide quasi-judicial powers and has the trappings of a court.

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[8] **(2008) 6 SCC 750**

[9] **(2006) 7 SCC 613**

32. Further, the Hon'ble Supreme Court in ***Tata Consultancy Services Ltd. v Cyrus Investments (P) Ltd.***[10] noted that the object of the learned NCLT while dealing with an application complaining of oppression and mismanagement is to bring an end to the entire complaint and any ancillary matters thereof.

33. Lastly, the Hon'ble Supreme Court in ***Mrs. Shailja Krishna v Satori Global Limited & Ors.*** [11] noted *inter-alia* as follows –

> *30. **The aforesaid decisions confirm the view that the NCLT/CLB possess a wide jurisdiction to decide all such matters that are incidental and/or integral to the complaint alleging oppression and mismanagement**. Such power is, however, subject to any other legislative enactment specifically debarring the NCLT/CLB from exercising its powers in this respect.*
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> *31. in the instant case, it is an admitted fact that the determination of whether the gift deed is valid or not is central to the decision herein, and therefore, the NCLT did have full jurisdiction to decide whether the gift deed is valid or not, or whether it is against the provisions of the 1956 Act and/or internal regulations of the company, including but not limited to the AoA and the Memorandum of Association." (emphasis supplied)*

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[10] **(2021) 9 SCC 449**

[11] **AIR 2025 SUPREME COURT 4047**

34. Applying the ratio of ***Mrs. Shailja Krishna*** to the present case, it is clear that the transfer of shares dated 17.06.2010 is central to the issue and falls squarely within the jurisdiction of the learned NCLT.

35. A perusal of the aforementioned authorities makes it abundantly clear that in cases of oppression and mismanagement, as is the case pleaded out in the CLB petition, the learned NCLT has complete jurisdiction to adjudicate all issues necessary for bringing a quietus to the issue.

36. The learned counsel for the petitioner has also submitted that the learned NCLT is not empowered to decide questions of rights, title and inheritance and is thus not the appropriate forum to decide the issue of transfer of shares.

37. It is relevant to consider the following important distinction. The question of title and inheritance would only have arisen when the shares were still a part of Late. Sh. K.C. Dhawan's estate, however, admittedly the shares have been transferred to respondent no. 1 prior to the death of Late. Sh. K.C. Dhawan. Since the shares have already been transferred, and do not form a part of his estate on the day when the partition is sought, thus, there arises no question of inheritance.

38. The issue pending before the learned NCLT is not one of inheritance, but to adjudicate whether the transfer of shareholding *qua* the purported board meeting dated 17.06.2010, prior to the death of Late. Sh. K.C. Dhawan, is legal or not. In that view, the reliance on ***Aruna Oswal*** is misconceived as the same proceeds on an assumption that the question pending before the learned NCLT is one of inheritance.

39. The petitioner would have first have to demonstrate that the shares have illegally been transferred to respondent no. 1 and only when such transfer is repudiated, and the shares consequently fall in the estate of Late. Sh. K.C. Dhawan, only then does the question of right, title and inheritance arise.

40. It is also relevant to consider the conduct of the petitioner in pursuing the present proceedings. The petitioner instituted the underlying suit for partition in 2012 and, in the same year, instituted parallel proceedings before the learned CLB under Sections 397, 398, 402 and 403 of the Companies Act. Thereafter he moved an application seeking amendment of the plaint, which came to be dismissed in 2014, and is now under challenge in the present proceedings. Both the civil suit and the proceedings before the learned CLB have remained pending and have not attained finality. The successive proceedings and challenges pursued by the petitioner has had the effect of keeping the underlying issues alive and preventing their final resolution.

41. Furthermore, the reliance on ***Ammonia Suppliers*** is misconceived on facts. In that case, the learned Company Judge had, during the course of proceedings, confined the scope of the matter to rectification under Section 155 of the Companies Act, 1956. The reliefs and the scope of jurisdiction under Section 155 are materially narrower than those under Sections 397 and 398, which govern the present proceedings.

42. Before proceeding with the merits of the issues regarding lack of due diligence, this Court deems it apposite to note that the Hon'ble

Supreme Court in ***LIC v Sanjeev Builders Pvt. Ltd. & Anr.*** [12] has culled out the following principle–

> *"71.2 All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word "shall", in the latter part of Order VI Rule 17 CPC."*

43. In the present case, this Court is of the opinion that allowing the amendment and including the already transferred shares, the legality of which is pending adjudication, within the partition suit would cause significant prejudice to the respondent, and is thus, impermissible. Since the shares had been transferred and the same do not now form a part of Late. Sh. K.C. Dhawan's estate, it would be impermissible for the learned trial court to bring the transferred shares within the ambit of the partition suit.

44. A perusal of Order VI Rule 17 CPC makes it clear that amendments shall be allowed subject to fulfilment of the test of due diligence. The test of due diligence placed the burden on the party seeking to amend the pleading to show that they did not have the requisite information before commencement of trial, or could not have attained that information with reasonable due diligence.

45. In this Court's opinion, the petitioner has not met that standard. The petitioner is admittedly a director and a shareholder of a close-knit family company. He was further drawing a salary on the strength of that directorship, and was closely engaged in the field work for that

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[12] **(2022) 16 SCC 1**

company. Furthermore, the suit was instituted in May 2012 whereas the CLB petition was instituted in August 2012 seeking repudiation of the change in shareholding. Since the CLB petition has been filed challenging the transfer of shares, it becomes apparent that the petitioner was aware of the changes in shareholding, and has thus, filed the amendment application in 2014 at a belated stage.

46. Even judging by the standard of preponderance of probabilities, it is highly improbable that the petitioner, being a salary-drawing director was unaware of the changes in majority shareholding of his own family company.

47. Furthermore, the petitioner has not placed on record the Minutes of Meeting dated 16.08.2010 whereby it was allegedly stated that Late Sh. KC Dhawan's shares were distributed equally. In absence of the Minutes of Meeting, this Court cannot ascertain whether the petitioner had any reason to believe that the shareholding was transferred contrary to the Minutes of Meeting.

48. With respect to the contention that the learned trial court has taken a restrictive approach and has adjudicated the merits of the proposed amendments, this Court is of the opinion that that the same is misconceived. While it is settled law that courts must be liberal in allowing amendments in order to bring out the real controversy of the case, however, the same does not imply a mindless adjudication by the learned trial court.

49. The learned trial court has rightly exercised their discretion and merely because the learned trial court held that the incorporation of the prayer for partition of shares would run afoul of the proceedings before the learned NCLT would not amount to a restrictive approach. While it is trite law that a liberal approach must be taken at the stage of Order VI Rule 17, however, such liberal approach cannot be construed to allow something which is contrary to law.

50. In this Court's opinion, the learned trial court would have erred in including the shares owned by respondent no. 1 within the estate of Late. K.C. Dhawan, especially when the challenge to the transfer is pending before the learned NCLT. Thus, the reliance on ***BK Narayan Pillai*** and ***Rajesh Sharma*** is misconceived.

51. Lastly, with respect to the contention that the learned trial court has erred in holding that the amendment is hit by the proviso to Order VI Rule 17 CPC, this Court is of the opinion that the same does not now fall for consideration. Once it is established that the learned trial court could not have allowed the amendment in the first place, due to the parallel pending proceedings, the stage at which the application for amendment has been filed, is immaterial.

52. Considering the totality of facts – that the petitioner himself has filed the petition before the learned NCLT challenging the transfer of shares prior to the death of Late Sh. KC Dhawan, that the learned NCLT has wide jurisdiction to adjudicate all issues concerning such transfer of shares and oppression and mismanagement, and that the petitioner has failed the test of due diligence by seeking to amend the plaint at a belated stage despite having sufficient knowledge, this Court is of the opinion that the impugned order does not suffer from any infirmity.

53. Accordingly, the petition along with pending applications, if any, stands dismissed.

54. The judgment be uploaded on the website forthwith.

AJAY DIGPAUL, J.

SEPTEMBER 21, 2026/ar/sg